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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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TOUGH CITY, INC. and SAMIR RAJPUT,

Civil Action 07 Civ. 06626 (NRB)

Plaintiffs,

v.

XENS, INC.,

AFFIDAVIT IN SUPPORT

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SAMIR RAJPUT, being duly sworn, deposes and says:

1. I am a plaintiff in the above-captioned action, and am fully familiar with all of the facts which are set forth herein.

2. I submit this affidavit in support of plaintiffs' Motion for a Default Judgment, and provide the following information to the Court to provide guidance as to the damages to be assessed against the defendant, Xens, Inc.

3. The defendant, Xens, Inc. (hereinafter "Xens") has been selling sneakers with the registered trademark "Tough City," of which mark I am the owner, without authorization.

4. I am currently aware that Xens has sold at least the following products containing the “Tough City” mark without authorization: three containers, each containing approximately 6,000 pairs of sneakers. This totals 18,000 pairs of sneakers sold by Xens with the unauthorized use of the mark “Tough City.”

5. The approximate cost to manufacture these sneakers is approximately \$10-\$12.00 per pair.

6. These sneakers are then sold by Xens to wholesalers for the approximate price of \$35-\$45.00 per pair.

7. Therefore, by taking the average cost and average wholesale price, the approximate profit on each pair of sneakers is roughly \$29.00 per pair (\$40.00 average wholesale price minus \$11.00 average cost) = \$29.00.

8. As Xens has sold at least 18,000 pairs of sneakers with the Tough City mark, the lost profits are approximately \$522,000.00 (18,000 x \$29.00).

9. In addition, I am aware that Xens also has inventory of at least 14,000 additional sneakers with the unauthorized “Tough City” mark. Xens is currently selling these products.

10. Assuming the same profit margin as the original product, Xens will garner an additional profit of approximately \$406,000.00 once the additional 14,000 sneakers are sold.

11. Therefore, I request that the Court enter a judgment in the amount of \$928,000.00, representing profits made by Xens by selling sneakers with the unauthorized mark “Tough City.”

12. Plaintiffs also waive any claims it has for attorneys' fees.

Dated: New York, New York
November 27, 2007

AS Samir

SAMIR RAJPUT



Sworn to before me this
day of December, 2007

Notary Public



ATTESTED
KJA
KHALID JAVED
Notary Public, New York State.
05.12.2007

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